

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0023 ST
Sales and Use Tax
For The Tax Periods: 1991, 1992, and 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax: Purchase of a "Marketing Room"

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, 45 IAC 2.2-3-10, IC 6-8.1-5-4

Taxpayer protests assessment of tax on its "marketing room."

II. Tax Administration: Negligence Penalty

Authority: IC 6-8.1-10-2.1

Taxpayer protests assessment of negligence penalty.

STATEMENT OF FACTS

Taxpayer provides lawn, tree and shrub care services to primarily the residential market.

I. Sales/Use Tax: Purchase of a "Marketing Room"

DISCUSSION

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. Use tax is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC 6-2.5-3-2.

Taxpayer hired a contractor to install a "marketing room." Citing 45 IAC 2.2-3-10, taxpayer contends that the contractor is liable for tax. However, this rule pertains to a contractor's purchase of materials in a retail transaction. Taxpayer's liability as to these retail transactions depends upon whether the taxpayer was billed for time and materials or in a lump sum contract. Taxpayer failed to present documentation, such as invoices, to support its contention.

Pursuant to IC 6-8.1-5-4(a), every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by

reviewing those books and records. Records should include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. Taxpayer has not submitted documentation to support its protest. Thus, the protested items are subject to tax.

FINDING

Taxpayer's protest is denied.

II. Tax Administration: Negligence Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to remit use tax to the Department. Taxpayer argues that this deficiency was due to reasonable cause. Taxpayer argues the reasonable cause was due to large growth in its business and its concentration on sales tax issues. Taxpayer contends that its focus on sales tax issues shows that its deficiency as to use tax was not due to willful neglect. The Department finds that the taxpayer's lack of sufficient records and use tax deficiency warrant the assessed negligence penalty.

FINDING

Taxpayer's protest is denied.